

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ZENIA BROWN,

Plaintiff

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security

Defendant

Case No.: 2:23-cv-00254-APG-NJK

**Order Accepting Report and
Recommendation, Granting in Part
Plaintiff's Motion for Summary Judgment**

[ECF Nos. 19, 27]

On November 6, 2023, Magistrate Judge Koppe entered her Report and Recommendation (ECF No. 27) recommending that plaintiff Zenia Brown's motion for summary judgment be granted in part and denied in part. Judge Koppe recommended that the case "be remanded to the Appeals Council so that the Appeals Council can remand the case to an Administrative Law Judge (ALJ) for determination of the relevant outstanding issues," that is, a determination related to the appropriate jobs that Brown may be able to perform based on her residual functional capacity. ECF No. 27 at 7. She further recommended that Brown's motion be denied "to the extent that it seeks remand for an immediate award of benefits." *Id.* at 7-8. Brown objected to Judge Koppe's report and recommendation, so I must conduct a de novo review. ECF No. 28; LR IB 3-2.

Having conducted a de novo review, I agree with Judge Koppe that because it is not "clear from the record that the ALJ would be required to find [Brown] disabled," the appropriate remedy is to remand for further administrative proceedings rather than an immediate award of benefits. *Strauss v. Comm'r of the Soc. Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir. 2011) (quotation omitted); *see* ECF No. 27 at 7. Brown's objection that the Commissioner "should not

1 be given a third bite at the apple” to meet her burden at step five is not persuasive because “[a]
2 claimant is not entitled to benefits under the [Social Security Act] unless the claimant is, in fact,
3 disabled, no matter how egregious the ALJ’s errors may be.” *Id.*; ECF No. 28 at 6.

4 I THEREFORE ORDER that Magistrate Judge Koppe’s Report and Recommendation
5 **[ECF No. 27] is ACCEPTED.**

6 I FURTHER ORDER that plaintiff Zenia Brown’s motion for summary judgment **[ECF**
7 **19] is GRANTED in part and DENIED in part.** The motion is granted to the extent that the
8 case is **REMANDED** for further administrative proceedings consistent with Judge Koppe’s
9 Report and Recommendation. The motion is denied to the extent that it seeks an immediate
10 award of benefits.

11 DATED this 9th day of January, 2024.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE